

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Quintin M. Littlejohn,)	
)	
Petitioner,)	C.A. No.: 6:07-2177-RBH
)	
vs.)	ORDER
)	
Harold Creciven, Captain at Cherokee)	
County Detention Center,)	
)	
Respondents.)	
)	
_____)	

This matter is before the court for review of the Report and Recommendation of United States Magistrate Judge William M. Catoe, made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. See Mathews v. Weber, 423 U.S. 261, 270-71 (1976). The court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. See 28 U.S.C. § 636(b)(1).

On September 24, 2007, Petitioner filed a Motion to Amend, Set Aside and Vacate Order of September 11, 2007. The Court will attempt to construe this document as objections to the Magistrate's Report. Petitioner appears to assert that summary judgment should be granted to him as a matter of law

on his habeas action because the incident report relating to his arrest does not match the affidavit attached to the warrant in that the incident report states that drugs were found in the car of the petitioner and the affidavit states that the drugs were found on the person of the petitioner. However, the Court agrees with the Magistrate Judge that the petitioner's motion for summary judgment was premature since it was filed before the respondents responded to the petition.¹

After a thorough review of the Report and Recommendation and the record in this case, the court adopts Magistrate Judge Catoe's Report and Recommendation and incorporates it herein. It is therefore

ORDERED that the petitioner's motion for summary judgment/ motion to dismiss is hereby **DENIED** without prejudice.

IT IS SO ORDERED.

s/ R. Bryan Harwell

R. BRYAN HARWELL
United States District Judge

Florence, South Carolina
October 22, 2007

¹ The respondents have since filed a Return and Motion for Summary Judgment on the basis that the state criminal proceedings have not yet been completed.